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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/626,770

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Albert Rappaport

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06/23/2008

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EXAMINER

BURD, KEVIN MICHAEL

ART UNIT

PAPER NUMBER

2611

MAIL DATE

DELIVERY MODE

06/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/626,770

Applicant(s)

RAPPAPORT ET AL.

Examiner

Kevin M. Burd

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

1. This office action, in response to the remarks filed 4/18/2008, is a final office action.

Response to Arguments

2. The previous objection to the drawings is withdrawn.
3. Applicant's arguments filed 4/18/2008 have been fully considered but they are not persuasive. Applicants state the office action's allegation that specific break points of a power density spectral mask are not components of an apparatus is vague as the examiner fails to provide a legal basis for rejecting claims 1-12. The examiner disagrees. Applicants claim an ADSL system comprising a central office configured to perform spectrum management wherein the central office operator provides a power spectral density mask. These limitations are disclosed in the prior art as shown in the previous rejection of the claims. The claims recite the power spectral density mask contains a plurality of specific break points. The prior art discloses a power spectral density mask also contain specific break points. The break points are data points that are input into the central office to represent the mask. Using one set of data points rather than a second set of data points does not change the apparatus into a different apparatus in terms of structure. The prior art ADSL system and the claimed ADSL system contain the same structural limitations but have different data points input and stored thereupon to represent the power spectral density mask. As stated in the previous rejection of the claims, these stored data points are not components of the

system and therefore do not distinguish the claimed apparatus from the prior art in terms of structure. An apparatus (system) is recited in claims 1-12.

Applicants respectfully submit that the series of PSD masks are represented at least in part by the break points and are not taught by the prior art. However, applicants are not claiming PSD masks. The claims recite the system for utilizing the break points. In this case, the prior art discloses a system for utilizing break points for representing a PSD. The system does not become a different and patentably distinct system depending on the data points that are stored in the memory of the system.

The examiner is not asserting the selection of the break points are merely a design choice. The selection of the break points does not change the structure of the ADSL system since the break points are not components of the ADSL apparatus. The break points are data stored in a memory of the system.

For these reasons and the reasons stated in the previous office action, the rejections of the claims are maintained and stated below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-12 are rejected under 35 U.S.C. 102(a) as being anticipated by the instant application's disclosed prior art.

Regarding claims 1-12, page 2, lines 13-21 of the instant application's disclosed prior art describes an ADSL system and central office that performs spectral management. The standards incorporated by reference in the instant application's disclosed prior art further describe this system. Page 4, lines 8-20 states the ADSL system will manage the power spectral density about the POTS frequency band. Break points are stored in the system to allow the management of the power density spectrum. This system can store any plurality of break points that are desired. Specific break points of a power density spectral mask are not components of an apparatus or system.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin M. Burd whose telephone number is (571) 272-3008. The examiner can normally be reached on Monday - Friday 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David C. Payne can be reached on (571) 272-3024. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin M. Burd/
Primary Examiner, Art Unit 2611
6/17/2008